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tion 2934, and hence could not be maintained within a year after the termination of the prior action, notwithstanding the expiration of the time limited for the taking of such appeal originally.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 539, 545, 553-566; Dec. Dig. § 130.* 9 Va.-W. Va. Enc. Dig. 401.]

Error to Circuit Court, Northampton County.

Petition for mandamus by Clinton Scott against George T. Tyson, Clerk of the Circuit Court of Northampton County, to compel the granting of an appeal from an ex parte order admitting a will and codicil to probate. From an order awarding mandamus, the clerk and others bring error. Reversed.

C. V. Meredith, of Richmond, and *Otho. F. Mears*, of Eastville, for plaintiffs in error.

Westcott & Turlington, of Accomack, and *Jeffries, Wolcott, Wolcott & Lankford*, of Norfolk, for defendant in error.

WILLIAMS *v.* COMMONWEALTH ex rel. SMITH et al.

March 12, 1914.

[81 S. E. 61.]

1. Municipal Corporations (§ 138*)—Member of Council—Qualification—Residence.—Where member of the city council of A. was born in, and had been a resident of, and engaged in business for a number of years in the city of A., and had voted and paid taxes therein, including his poll tax, and owned a residence there, and also a store building, the principal portion of which he intended to remodel for use for dwelling purposes in case he should sell his dwelling, neither the fact that he occupied a summer cottage out of the city during the summer and also a part of the winter because his wife was soon to be confined, nor the fact that he had offered his residence in the city for sale, constituted an abandonment of his residence in the city such as rendered him ineligible as a member of the council, though he also had a place of business in the city of W.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 313; Dec. Dig. § 138.* 10 Va.-W. Va. Enc. Dig. 189; 14 Va.-W. Va. Enc. Dig. 750; 15 Va.-W. Va. Enc. Dig. 713.]

2. Words and Phrases—"Resident"—"Residence."—It is difficult to give an exact definition of what is meant by "resident" and "residence," as used in particular statutes. Their meaning is to be determined from the facts and circumstances in each particular case.

[Ed. Note.—For other definitions, see Words and Phrases, vol. 7,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

pp. 6151-6166; vol. 8, p. 7788.* 11 Va.-W. Va. Enc. Dig. 931; 15 Va.-W. Va. Enc. Dig. 876.]

3. Officers (§ 22*)—Eligibility—Residence.—As related to the right to hold office, a legal residence, once acquired by birth or habitancy, is not lost by temporary absence for health or business, or while attending to the duties of a public office.

[Ed. Note.—For other cases, see Officers, Cent. Dig. § 27; Dec. Dig. § 22.* 11 Va.-W. Va. Enc. Dig. 461; 14 Va.-W. Va. Enc. Dig. 852; 15 Va.-W. Va. Enc. Dig. 836.]

4. Officers (§ 22*)—Eligibility—Residence.—Where a man has two places of living, the question which is his legal residence is to be determined largely, where his right to hold office is involved, by his intention.

[Ed. Note.—For other cases, see Officers, Cent. Dig. § 27; Dec. Dig. § 22.* 11 Va.-W. Va. Enc. Dig. 931; 15 Va.-W. Va. Enc. Dig. 876.]

5. Officers (§ 22*)—Eligibility—Residence.—As relating to the right to hold office, where a man acquires a new legal residence, he loses the old; but to effect this there must be both act and intention.

[Ed. Note.—For other cases, see Officers, Cent. Dig. § 27; Dec. Dig. § 22.* 11 Va.-W. Va. Enc. Dig. 931; 15 Va.-W. Va. Enc. Dig. 876.]

6. Officers (§ 22*)—Eligibility—Residence.—As related to the right to hold office, where a person leaves his original residence without intention to return and adopts another with intention to remain his first residence is lost; but if, in leaving his original residence, he does so with intention to return, such original residence continues, notwithstanding temporary absence of himself and family.

[Ed. Note.—For other cases, see Officers, Cent. Dig. § 27; Dec. Dig. § 22.* 11 Va.-W. Va. Enc. Dig. 931; 15 Va.-W. Va. Enc. Dig. 876.]

Error to Corporation Court of Alexandria.

Quo warranto by the Commonwealth, at the relation of H. W. Smith and others, against Julian Y. Williams. From an adverse judgment, defendant brings error. Reversed and remanded.

Gardner L. Boothe, of Alexandria, for plaintiff in error.
S. G. Brent, of Alexandria for defendants in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.